IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1841 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MADHURIBEN HASMUKHLAL THAKKAR & 4 - Petitioner(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :
MR HARIN P RAVAL for Petitioner(s) : 1 - 5.
MR DIPEN DESAI ASST GOVERNMENT PLEADER for Respondent(s) : 1, 3,
MR NIKHILESH J SHAH for Respondent(s) : 2,
MR YS MANKAD for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 01/07/2006

ORAL JUDGMENT

1. By way of this petition under Article 226 of the Constitution of India, the petitioners have prayed for an appropriate writ, direction or order quashing and setting aside the action of the

respondents, more particularly, the Anjar Area Development Authority (hereinafter referred to as the “AADA” for short) and the Town Planning Officer of the Town Planning Scheme No.2-A in so far as it proceeds to reconstitute the Final Plot No.966 out of the land of the ownership of Anjar Municipality which is leased to the petitioners on lease / rent and on which the petitioners' lawful construction of five shops made as per the sanctioned plans is existing. The petitioners have also prayed for an appropriate writ, direction or order directing the respondents, more particularly, AADA and the Town Planning Officer to allot the land to the petitioners of Final Plot corresponding to the area of the land already occupied by the construction lawfully made by the petitioners.

2. It is the case of the petitioners that one Ghanshyam Kantilal Pandya was allotted the land bearing property No.60 situated near Varsa Madhi Naka on rent / lease by the Anjar Municipality for the purpose of putting up small shop to carry on petty business. That thereafter, he has put up

shops / cabins which were transferred to the petitioner No.1 along with super-structure. Similarly, the petitioner No.2 was also given on rent / lease the land by Anjar Municipality upon which he has put up construction of shops. Similarly, so far as the other petitioners are concerned, they claim that the land upon which their shops were constructed were leased out by the Anjar Municipality and super-structure was constructed by them. On implementation of the Town Planning Scheme No.2-A, the land occupied by the petitioners is allotted to some other persons as part of the reconstituted Final Plot No.966 and when they were sought to be evicted, the petitioners have preferred the present special civil application for the aforesaid reliefs.

3. Shri R.M.Chhaya, learned advocate appearing on behalf of the petitioners has submitted that though the petitioners were occupiers and owners of the super-structure erected on the land which was leased out by the Anjar Municipality, it is now allotted to private persons being Final Plot No.966

and as such, no notices have been issued upon the petitioners before implementing and finalisation of the Town Planning Scheme as required under Section-52 of the Act and under Rule-26 of the Gujarat Town Planning Rules. It is further submitted that as the petitioners are owners of the super-structure upon the land and the petitioners are lessee, the petitioners are entitled to the land as the owners of the land which is required to be given under the provisions of the Act and/or petitioners are entitled to compensation for superstructure.

4. Relying upon the provisions of sub-section (xii) of Section-2, sub-section (xiii) of Section-1, sub-section (xvi) of Section-2, sub-section (xviii) of Section-2, and sub-section (xix) of Section-2 it is the contention on behalf of the petitioners that as they are owners of the superstructure, they are to be treated as the owners of the land and being the owners of the superstructure and occupiers, they are required to be given alternative land in lieu of the land which is now forming part of Final Plot No.966 under the

finalised Town Planning Scheme. It is also submitted that no land has been allotted to the petitioners in lieu of the land occupied by the petitioners as lessee and therefore, it is requested to allow the present special civil application and grant the reliefs as prayed for.

5. The petition is opposed by Shri Nikhilesh J. Shah, learned advocate for the respondent No.2, Shri Dipen Desai, learned AGP for the respondent Nos.1 & 3 and Shri B.Y.Mankand, learned advocate for the respondent No.4 (allottee of the Final Plot No.966). It is submitted that the Town Planning Scheme has become final after following due procedure as required to be followed under the Act and under the finalised Town Planning Scheme, the land occupied by the petitioners has been allotted on reconstitution of the plots to the respondent No.4 being Final Plot No.966 and once the Town Planning Scheme has become final and it has become part of the Act, the Town Planning Scheme has to be implemented. It is also further submitted that in fact, lease in favour of the petitioners has not

been renewed and the petitioners cannot be considered to be owners of the land and if they were owners of the superstructure, then, they are required to take away their superstructure as the land was never owned by the petitioners. It is submitted that an identical question came to be considered by this Court and the very arguments and submissions made in support of the instant case are considered and dealt with by this Court in case of KANJIBHAI DAHYABHAI MALSATTAR & OTHERS V. STATE OF GUJARAT AND OTHERS reported in 2005 (2) GLR 1649 and this Court has dismissed the said petition. It is submitted that the present special civil application is identical to the said petition which came to be dismissed by this Court and therefore, it is requested to dismiss the present special civil application.

6. It is not in dispute that the petitioners were lessees and the land upon which the superstructure were constructed, they are belonging to the Anjar Municipality and that lease in favour of the respective petitioner has not been renewed,

the day on which the intention of the Town Planning Scheme No.2-A was declared. The submissions which are made by and on behalf of the petitioners in the present special civil application came to be considered by this Court in case KANJIBHAI DAHYABHAI MALSATTAR AND OTHERS V. STATE OF GUJARAT AND OTHERS (Supra) and this Court has elaborately dealt with the same. The present special civil application is similar to the Special Civil Application which came to be dismissed by this Court in case of KANJIBHAI DAHYABHAI MALSATTAR AND OTHERS V. STATE OF GUJARAT AND OTHERS (Supra) and therefore, for the reasons stated in the aforesaid decision, the present Special Civil Application is required to be dismissed as the same is covered by the said judgment. Even otherwise, it is required to be noted that the petitioners have not challenged the Town Planning Scheme which has become final.

7. For the reasons stated stated above and for the reasons in the said decision of KANJIBHAI DAHYABHAI MALSATTAR AND OTHERS (Supra), the present

special civil application is dismissed.

8. Notice stands discharged. Ad-interim relief, granted earlier, if any, stands vacated.

[M.R.Shah, J.]

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